BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Hiram L. Allen Dist. 3, Map 57I, Group C, Control Map 57I, Parcel 5.00, S.I. 000 Residential Property Tax Year 2007	)) Wilson County)))

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$39,000	$202,900	$241,900	$60,475

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on January 17, 2008 in Lebanon, Tennessee. In attendance at the hearing were Hiram L. Allen, the appellant, and Wilson County Property Assessor's representatives Val Vastola, Denise Hunt and Cindy Brown.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located at 2018 Arlington Road in Lebanon, Tennessee. The taxpayer purchased subject property on November 1, 2004 for $282,000.

In 2005, Wilson County underwent a countywide reappraisal program. As a result of the reappraisal program, subject property was valued at $228,300 effective January 1, 2005. At that time, the upper story was listed on the property record card as an "upper story low." In 2006, the assessor reclassified the upstairs as an "upper story high." This change resulted in the appraisal of subject property increasing to $241,900 effective January 1, 2006.

The taxpayer contended that subject property should be valued at $228,300 as it was following the 2005 countywide reappraisal program. In support of this position, the taxpayer argued that the assessor's revaluation of subject property in 2006 constituted unlawful discrimination.[1] The taxpayer essentially maintained that he had been singled out for disparate treatment since other homeowners were not revalued in 2006.

The assessor contended that subject property should remain valued at $241,900. In support of this position, Mr. Vastola testified that the assessor was directed by the Division of Property Assessments to correct certain listing errors made in the 2005 reappraisal program. According to Mr. Vastola, the primary problem areas pertained to (1) whether

[1] The taxpayer did not contest the assessor's appraisal from a market value standpoint.

upper stories should be listed as "upper story low" or "upper story high," and (2) whether heating and cooling systems should be listed as "heat and cooling split" or "heat and cooling package."

Mr. Vastola stated that the appraisal of subject property was reviewed for tax year 2006, along with those of other homes in the neighborhood, in conjunction with the on-site review mandated by Tenn. Code Ann. § 67-5-1601(a)(1) which provides in pertinent part that "[r]eappraisal shall be accomplished in each county by a continuous six-year cycle comprised of an on-site review of each parcel of real property, over a five year period. . ."

The assessor contended that the taxpayer was not singled out as maintained by Mr. Allen. In support of this contention, the property record cards for five of Mr. Allen's neighbors were introduced into evidence. According to Mr. Vastola, a review of the "notes" sections of the various cards show that similar changes were made to those appraisals.

The first issue before the administrative judge concerns the tax years properly before the State Board of Equalization. The taxpayer's appeal form was received by the State Board of Equalization on July 20, 2007 and indicated the taxpayer was appealing tax years 2005 and 2006.

The administrative judge finds that the deadlines for appealing tax years 2005 and 2006 were March 1, 2006 and March 1, 2007 respectively. See Tenn. Code Ann. § 67-5-1412(e). The administrative judge finds that the State Board of Equalization lacks equitable powers and cannot simply waive statutory requirements. See *Trustees of Church of Christ* (Assessment Appeals Commission, Obion Co, Exemption). Accordingly, the administrative judge finds that the taxpayers appeals for tax years 2005 and 2006 are untimely and the State Board of Equalization lacks jurisdiction over those tax years.

The administrative judge finds that the taxpayer appealed to the Wilson County Board of Equalization for tax year 2007 and filed a timely appeal with the State Board of Equalization. Consequently, the administrative judge finds that the State Board of Equalization has jurisdiction over the disputed appraisal for tax year 2007.

The administrative judge finds that the assessor's ability to change a particular appraisal between reappraisal programs depends upon the facts peculiar to the individual situation. For example, in *Helen S. Haskins* (DeKalb Co., Tax Year1995) the administrative judge found that the assessor unlawfully spot reappraised the taxpayers parcel. In that case, the assessor increased the appraisal of the taxpayer's lot, as well as several other lots, because he believed sales following the 1993 reappraisal program supported a higher value as of January 1, 1995. On the other hand, the State Board of Equalization has consistently upheld assessors' authority to issue corrections of errors between reappraisals pursuant to Tenn. Code Ann. § 67-5-509 which provides in pertinent part that:

* * *

(c)(1) Whenever the assessor shall discover, or it has been called to such assessor's attention, that there has been an error or omission in the listing, description, classification or assessed value of property or any other error or omission in the tax rolls held by the trustee or municipal collector, the assessor shall certify in writing the facts to the trustee or municipal collector, who shall receive the tax on the corrected assessment. . .

(d) Correction of assessments pursuant to this section must be requested by the taxpayer, or initiated by the assessor, prior to March 1, no more than the second year following the tax year for which the correction is to be made. . .

* * *

(f) Errors or omissions correctable under this section include only obvious clerical mistakes, involving no judgment of or discretion by the assessor, apparent from the face of the official tax and assessment records, such as the name or address of an owner, the location or physical description of property, misplacement of a decimal point or mathematical miscalculation, errors of classification, and duplicate assessment.

See also *Mall of Memphis Associates v. State Board of Equalization*, No. 02A01-9609-CH-00214 (Tenn. App., August 1, 1997, Western Section) wherein the Court of Appeals upheld the assessor's decision to revalue only shopping malls the year following the countywide reappraisal. The Court essentially found that the assessor was correcting an error that existed in the base rental rates and gross rent multipliers used to appraise shopping malls in the countywide reappraisal program.

As previously indicated, it was the assessor's decision to reclassify the upstairs of subject property from an "upper story low" to an "upper story high" that precipitated the increased appraisal for tax year 2006. As noted in exhibit #3, those terms are defined at page 8.2 of the Residential Listing Manual published by the Division of Property Assessments as follows:

3. **Upper Story Low.** This type is very similar to the one-story with a finished attic (ATF). The differences are a roof with greater pitch and a large dormer on one side of the roof and possibly one or two small dormers on the opposite side of the roof. This example would be coded USL for the entire base area. This upper story should provide 30 percent of the living area on the first floor in the second floor. In other words, if the base has 1,500 square feet living area, then the upper story should provide 450 square feet. (Reference Illustration 3: Upper Story Low)

4. **Upper Story High.** This type is similar to an Upper Story Low with a dormer. The difference is a very steep roof with a full dormer across one end of the house. This example would be coded USH for the entire base area. It carries a 50 percent value

> of the base value. USH should reflect an upper story that has half of the living area that the base has. In a house with 2,000 square feet on the bottom floor, USH would reflect 1,000 feet of living area on the second floor. (Reference Illustration 4 – Upper Story High)

The administrative judge finds the assessor's reclassification of the upper story for tax year 2006 comports with Tennessee law. The administrative judge finds that for all practical purposes the assessor has simply corrected the physical description of subject property. Ironically, the administrative judge would observe that such changes have historically benefited taxpayers disproportionately. The present appeal happens to be one of those relatively rare instances wherein such a correction results in a higher value rather than a lower value.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2007:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$39,000	$202,900	$241,900	$60,475

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 29th day of January, 2008.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Hiram L. Allen
Jimmy Locke, Assessor of Property